

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

NANCY AVINA,)	
)	
Plaintiff,)	
)	Case No. 4:19-cv-00480-RK
v.)	
)	
UNION PACIFIC RAILROAD CO.,)	
)	
Defendant.)	

STIPULATION OF DISMISSAL WITH PREJUDICE
OF ONLY THE CLAIMS REGARDING THE ADMINISTRATIVE AIDE POSITION
NOW SET FOR TRIAL ON 8/15/22

Plaintiff Nancy Avina, and defendant Union Pacific Railroad Company, pursuant to Rule 41(a)(1)(A)(ii), Fed. R. Civ. P., hereby stipulate and agree as follows:

1. From January 31, 2022 through February 10, 2022 this case proceeded to a jury trial. During that trial, two (2) claims were ultimately submitted to the jury: (1) Plaintiff's claim that defendant did not promote plaintiff to the Administrative Aide position in 2018 based on her race under 42 U.S.C. § 1981; and (2) that defendant did not promote plaintiff to the Administrative Aide position in 2018 based on her age under the Age Discrimination in Employment Act (ADEA). The jury was unable to reach a unanimous verdict on those claims and the Court properly declared a mistrial.
2. After the mistrial, the Court, in consultation with the parties, reset those claims for jury trial set to begin on August 15, 2022.
3. The parties hereby stipulate and agree that ONLY those claims now set for trial regarding the 2018 Administrative Aide position can and should be **DISMISSED WITH PREJUDICE**, with the parties to bear their own costs and attorneys' fees with respect to those claims.

4. The parties also stipulate and agree that this Stipulation to Dismiss does not apply to plaintiff's claims that were dismissed by the Court before submission of the 2018 Administrative Aide claim to the jury, namely, (a) that defendant discriminated against Plaintiff because of Plaintiff's race in failing to promote her into the 2017 1E Materials Supervisor position and (b) that the defendant discriminated against Plaintiff because of Plaintiff's race or age in failing to promote her into the 2018 1E Materials Supervisor position.

5. The parties stipulate and agree that because not all claims had been determined at the time of the mistrial, the Court's earlier interlocutory dismissals have now become final and subject to appeal.

6. The parties stipulate and agree that neither party contends, nor should any Court consider, that the 2017 and 2018 1E Materials Supervisor claims are the subject of this Rule 41 Stipulation.

Dated: June 13, 2022

Respectfully submitted,

THE POPHAM LAW FIRM

By: /s/ Dennis E. Egan
DENNIS E. EGAN - MO #27449
COOPER S. MACH – MO #68223
712 Broadway, Suite 100
Kansas City, MO 64105
Telephone: (816) 221-2288
Telecopier: (816) 221-3999
degan@pophamlaw.com
cmach@pophamlaw.com

THE MEYERS LAW FIRM LC

Martin M. Meyers – MO #29524
503 One Main Plaza
4435 Main St.
Kansas City, MO 64111
Telephone: (816) 444-8500
Email: mmeyers@meyerslaw.com
ATTORNEYS FOR PLAINTIFF

CONSTANGY, BROOKS, SMITH & PROHPETE, LLP

By: /s/ Robert L. Ortvals, Jr.
ROBERT L. ORTBALS, JR., MO Bar No. 56540
KIMBERLY F. SETEN, MO Bar No. 50449
2600 Grand Boulevard, Suite 750
Kansas City, Missouri 64108-4600
Telephone: (816) 472-6400
Facsimile: (816) 472-6401
Email: kseten@constangy.com
rortvals@constangy.com

Virginia L. Woodfork
600 17th Street, Suite 2700-S
Denver, Colorado 80202
Telephone: (720) 343-7572
Facsimile: (720) 343-7573
Email: vwoodfork@constangy.com
ATTORNEYS FOR DEFENDANT